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Charles E. Hunter

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EXAMINER

RAMAN, USHA

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/781,679	Applicant(s) HUNTER ET AL.	
	Examiner USHA RAMAN	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41,42,44,46-52,57-68,70-78 and 100-106 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41,42,44,46-52,57-68,70-78 and 100-106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :11-4-08, last page from 10-4-07.

Response to Arguments

1. Applicant's arguments filed October 13th, 2008 have been fully considered but they are not persuasive.

Applicant's arguments stating (see Remarks page 11) that, "The electronic appliance of Ginter is generally a general purpose computing device ...Thus Ginter does not disclose a player device "including proprietary circuitry configured to decode the proprietary format"" and that "Ginter teaches away from such a player device" have been noted however are not found persuasive. In particular, Ginter notes that contents maybe released in clear form from a VDE object once an object has been decrypted [0207]. Therefore, it would be apparent to one of ordinary skill in the art that such content in clear form is susceptible to unauthorized usage or copying, wherein it may be further advantageous to employ the proprietary encoding/decoding as taught by Downing to be used in the electronic appliance of Ginter so that usage of the content even it its clear form can be limited the proprietary players.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 41-42, 44, 46-49, 51-52, 60-68, 70-76, and 100-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (US Pre Grant Pub. 20040054630) in view of Downing (US Pat. 6,842,522).

With regards to claim 41, Ginter discloses a video distribution method performed by a video distribution system, comprising:

Receiving video content from a content provider (see [0147]);

Providing player devices at remote viewing locations (electronic appliances under control of VDE, see [0081], [0450]), said players devices configured for reading, decoding (see [0450]), decompressing (see [0478]) and watermarking (see [0146], fingerprinting maybe performed in the user's local VDE installation subsystem), the player device configured for communicating with the video distribution system to permit the player devices to notify the system when a particular video item is viewed using any one of the player devices (see [0376]).

Ginter additionally discloses that metering and usage information can be reported to server in each time a video is played (see [0376]) and further that such information may be communicated in real time or periodically using secure communications between the subsystems (see [0146]). Accordingly, the server (and other VDE subsystems) can establish communication connections with the player device;

After a video item is viewed by a consumer using one of the plurality of player devices at a remote viewing location (see [0450]), receiving from the particular one of the player devices, information (administrative object containing header 802 and audit information) identifying the video item viewed and at least one distribution

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agent associated with the video item viewed (see [0989], [1022]). As stated above, Ginter discloses that metering and usage information can be reported to server in real time using secure communications between the subsystems (see [0146]). Ginter therefore further anticipates the step of receiving the said information "in response to each time a video item is viewed".

Ginter discloses the step of effecting the distribution of video disks to the remote viewing locations, the video disks including a plurality of video items recorded in an encoded and compressed format designed to be viewed using only the player devices (see [0126] and [0147]), such that only the authorized party can decrypt it. Ginter notes that contents maybe released in clear form from a VDE object once an object has been decrypted [0207]. It would be apparent to one of ordinary skill in the art that such content in clear form is susceptible to unauthorized usage or copying.

Downing discloses that there is a need for a "closed" system, wherein content bearing media maybe played only on proprietary devices, wherein media cannot be copied or played in non-proprietary, "open", devices. See column 1 lines 34-38). The content is encoded in a proprietary format, such that one or more values within data frame is modified so as to prevent standard, open devices from reading the media. See column 3 lines 47-50. The data may be read only by devices comprising a decoder that can decode by reversing the encoding format (see column 4 lines 64-67). Accordingly Downing data is encoded in a proprietary format, wherein a playback device includes a proprietary circuitry configured to decode the

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content recorded in a proprietary encoded format. One of ordinary skill in the art would recognize that by encoding data in such a proprietary encoding format limits the usage of the data within the closed system, thereby minimizing unauthorized usage or copying at devices outside the closed system.

It would have been obvious to one of ordinary skill in the art to modify the VDE system of Ginter by add the proprietary encoding/decoding mechanism of Downing, thereby encoding content in a proprietary format, so that only authorized VDE appliances comprising the proprietary decoding circuitry may playback the content, thereby ensuring that other open or unauthorized devices may not playback or copy content even when they are in their clear form.

With regards to claim 60, Ginter discloses a system for distributing recorded digital data comprising:

At least one playback device for playing the at least one copy of digital data recording, wherein the at least one copy includes data identifying a distribution agent associated with the at least one copy (see [0416], [0989], [1022]); wherein the at least one playback device comprises an identification mechanism to identify contents of and the distribution agent associated with the at least one copy of the recording (see [0450], [1022]), wherein the at least one playback device is configured for reading, decoding (see [0450]), decompressing (see [478]), and watermarking (see [146]), and for communicating with a video distribution system to permit the playback device to notify the system when a particular recording is viewed (see [0376], [0146]); and

A transmitting mechanism configured to transmit from the at least one playback device to the system, information identifying the contents of and the distribution agent associated with the at least one copy of the recording played by the at least one playback device (see [0989], [1022]).

Ginter discloses that content maybe encoded and compressed in a format designed to be viewed using only the player devices (see [0126] and [0147]), such that only the authorized party can decrypt it. Ginter notes that contents maybe released in clear form from a VDE object once an object has been decrypted [0207]. It would be apparent to one of ordinary skill in the art that such content in clear form is susceptible to unauthorized usage or copying.

In an analogous art, Downing discloses that there is a need for a "closed" system, wherein content bearing media maybe played only on proprietary devices, wherein media cannot be copied or played in non-proprietary, "open", devices. See column 1 lines 34-38). The content is encoded in a proprietary format, such that one or more values within data frame is modified so as to prevent standard, open devices from reading the media. See column 3 lines 47-50. The data may be read only by devices comprising a decoder that can decode by reversing the encoding format (see column 4 lines 64-67). Specifically, the encoding step comprises the step of an inversion of certain standard values in the data frames and the decoder is designed to invert their values in a complementary manner restoring the data frames back to the original values thereby rendering it valid during playback (see column 2 lines 25-29 and column 4 lines 64-67). The data frames therefore comprise a

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specified security code (i.e. the inversion pattern), wherein the decoder is designed to invert the inversion pattern. Therefore by being designed to invert certain fields in a data frame, the decoder outputs only frames containing the proprietary encoded format and prevents decoding frames that do not have the inverted values (such as in conventional media that do not have such an encoding), see column 1 lines 33-35. One of ordinary skill in the art would recognize that by encoding data in such a proprietary encoding format limits the usage of the data within the closed system, thereby minimizing unauthorized usage or copying at devices outside the closed system.

It would have been obvious to one of ordinary skill in the art to modify the VDE system of Ginter by add the proprietary encoding/decoding mechanism of Downing, thereby encoding content in a proprietary format, so that only authorized VDE appliances comprising the proprietary decoding circuitry may playback the content, thereby ensuring that other open or unauthorized devices may not playback or copy content even when they are in their clear form.

With regards to claim 70, Ginter discloses a system for playing and for monitoring the playing of, digital recordings having given content authorized by a content provider, each of the recordings including data identifying an associated distribution agent (see [0416], [0989], [1022]), wherein the digital recording are distributed to consumers on video disks (optical discs, see [0013], [0189]) which includes a plurality of video items (see [0062], [2045]);

At least one playback device for playing the at least one copy of the recording, wherein the at least one playback device comprises an identification mechanism to identify contents of and the distribution agent associated with the at least one copy of the recording (see [0450], [1022]), wherein the at least one playback device is configured for reading, decoding (see [0450]), decompressing (see [478]), and watermarking (see [146]), and for communicating with a video distribution system to permit the playback device to notify the system when a particular recording is viewed (see [0376], [0146]).

A system controller configured to receive from the at least one playback device, information identifying the contents of and the distribution agent associated with the at least one copy of the recording played by the at least one playback device (see [0989], [1022]). Ginter discloses that content maybe encoded and compressed in a format designed to be viewed using only the player devices (see [0126] and [0147]), such that only the authorized party can decrypt it. Ginter notes that contents maybe released in clear form from a VDE object once an object has been decrypted [0207]. It would be apparent to one of ordinary skill in the art that such content in clear form is susceptible to unauthorized usage or copying.

In an analogous art, Downing discloses that there is a need for a "closed" system, wherein content bearing media maybe played only on proprietary devices, wherein media cannot be copied or played in non-proprietary, "open", devices. See column 1 lines 34-38). The content is encoded in a proprietary format, such that one or more values within data frame is modified so as to prevent standard, open

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devices from reading the media. See column 3 lines 47-50. The data may be read only by devices comprising a decoder that can decode by reversing the encoding format (see column 4 lines 64-67). Specifically, the encoding step comprises the step of an inversion of certain standard values in the data frames and the decoder is designed to invert their values in a complementary manner restoring the data frames back to the original values thereby rendering it valid during playback (see column 2 lines 25-29 and column 4 lines 64-67). The data frames therefore comprise a specified security code (i.e. the inversion pattern), wherein the decoder is designed to invert the inversion pattern. Therefore by being designed to invert certain fields in a data frame, the decoder outputs only frames containing the proprietary encoded format and prevents decoding frames that do not have the inverted values (such as in conventional media that do not have such an encoding), see column 1 lines 33-35. One of ordinary skill in the art would recognize that by encoding data in such a proprietary encoding format limits the usage of the data within the closed system, thereby minimizing unauthorized usage or copying at devices outside the closed system.

It would have been obvious to one of ordinary skill in the art to modify the VDE system of Ginter by add the proprietary encoding/decoding mechanism of Downing, thereby encoding content in a proprietary format, so that only authorized VDE appliances comprising the proprietary decoding circuitry may playback the content, thereby ensuring that other open or unauthorized devices may not playback or copy content even when they are in their clear form.

With regards to claim 100, Ginter discloses a system for playing and for monitoring the playing of, digital recordings having given content authorized by a content provider, each of the recordings including data identifying an associated distribution agent (see [0416], [0989], [1022]), wherein the digital recording are distributed to consumers on video disks (optical discs, see [0013], [0189]) which includes a plurality of video items (see [0062], [2045]);

At least one playback device for playing the at least one copy of the recording, wherein the at least one playback device comprises an identification mechanism to identify contents of and the distribution agent associated with the at least one copy of the recording (see [0450], [1022]), wherein the at least one playback device is configured for reading, decoding (see [0450]), decompressing (see [478]), and watermarking (see [146]), and for communicating with a video distribution system to permit the playback device to notify the system operator when a particular recording is viewed (see [0376]).

A transmitting mechanism configured to transmit from the at least one playback device to the system, information identifying the contents of and the distribution agent associated with the at least one copy of the recording played by the at least one playback device (see [0989], [1022]).

Ginter discloses that content maybe encoded and compressed in a format designed to be viewed using only the player devices (see [0126] and [0147]), such that only the authorized party can decrypt it. Ginter notes that contents maybe released in clear form from a VDE object once an object has been decrypted [0207].

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It would be apparent to one of ordinary skill in the art that such content in clear form is susceptible to unauthorized usage or copying.

In an analogous art, Downing discloses that there is a need for a "closed" system, wherein content bearing media maybe played only on proprietary devices, wherein media cannot be copied or played in non-proprietary, "open", devices. See column 1 lines 34-38). The content is encoded in a proprietary format, such that one or more values within data frame is modified so as to prevent standard, open devices from reading the media. See column 3 lines 47-50. The data may be read only by devices comprising a decoder that can decode by reversing the encoding format (see column 4 lines 64-67). Specifically, the encoding step comprises the step of an inversion of certain standard values in the data frames and the decoder is designed to invert their values in a complementary manner restoring the data frames back to the original values thereby rendering it valid during playback (see column 2 lines 25-29 and column 4 lines 64-67). The data frames therefore comprise a specified security code (i.e. the inversion pattern), wherein the decoder is designed to invert the inversion pattern. Therefore by being designed to invert certain fields in a data frame, the decoder outputs only frames containing the proprietary encoded format and prevents decoding frames that do not have the inverted values (such as in conventional media that do not have such an encoding), see column 1 lines 33-35. One of ordinary skill in the art would recognize that by encoding data in such a proprietary encoding format limits the usage of the data within the closed system,

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thereby minimizing unauthorized usage or copying at devices outside the closed system.

It would have been obvious to one of ordinary skill in the art to modify the VDE system of Ginter by add the proprietary encoding/decoding mechanism of Downing, thereby encoding content in a proprietary format, so that only authorized VDE appliances comprising the proprietary decoding circuitry may playback the content, thereby ensuring that other open or unauthorized devices may not playback or copy content even when they are in their clear form.

In regards to claim 42 the distribution agent (publishing house) makes copies of the digital recorded data delivered to the distribution agent as per the limits set forth by the content creator, wherein data maybe delivered on optical discs. See [0013], [0189], [0380], and [0388].

In regards to claims 44, 62, and, 101, Ginter discloses receiving (metering) information identifying the viewed item and distribution agent associated with the item at the system operator location at defined times. See [0146].

In regards to claims 46, Ginter discloses the step of charging the consumer based on the information received at the system operator location. See [0388]

In regards to claims 47, 74, and 103, Ginter discloses the step of charging the consumer a fee for each time the consumer plays the video data. See [0376]

In regards to claims 48, Ginter discloses a flexible metering scheme where a user can be charged each time a content is played or a user can be charged a single fee for accessing a content is played or a user can be charged a single fee for accessing

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a content unlimited times during a certain time duration. The user is charged a variable fee for accesses during that subscribed time duration and a pay per play fee for accessing outside that subscription period. See [1083].

In regards to claims 49, Ginter discloses:

The distribution agent is a retail store. See [0010], and [0257]

The consumer obtains identified copies of the video data at retail stores [0257] and subsequently returns the identified copies to the retail stores (i.e. user rents content object). See [1004], [2071]. Accordingly the method further comprises the step of providing an identified copy of the video item to the consumer at the retail store and subsequently receiving the identified copies to the retail store.

In regards to claims 51, and 65, Ginter discloses the step of compensating the distribution agent for each time the video data distributed by the agent is paid. See [0256], [0376], [0388], and [1022]

In regards to claim 52, Ginter discloses the step of charging the distribution agent for recordings delivered to the distribution agent. See [0256], [0378]

In regards to claims 61, 71 and 73, Ginter discloses a receiving mechanism located at the system operator of the video distribution system configured to receive the information from the playback device and for using the information to determine compensation for the content provider and the distribution agents. See [0376], [0388], [1022].

In regards to claim 63, the receiving act comprises receiving information at the system operator location (clearinghouse) from playback devices (end users), the

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information identifying a copy of digital data recording and the distribution agents. See [0146], [0989] and [1022]. Ginter further discloses that metering and usage information can be reported to server in real time (see [0146]). Ginter therefore further anticipates the step of receiving the said information "in response to the playback device playing a copy".

In regards to claims 64, Ginter discloses that the distribution network includes a plurality of retail stores. See [0010] and [0257]. Accordingly Ginter teaches a system wherein at least one copy is distributed in part through a retail store. In regards to claims 66, 75 and 104, the playback device includes a specified circuit (VDE electronic appliances with rights operating system) that enables the playback device to play distributed copies of the recording. See [0458], [0459].

In regards to claims 68 and 106, the recorded digital data is a movie. See [0062].

In regards to claims, 67, 76 and 105, the digital data is recorded in a tangible medium and the tangible medium is an optical disc. See [0147].

In regards to claims 72, and 102, the receiving act comprises receiving information at the system operator location (clearinghouse) from playback devices (end users), the information identifying a copy of digital data recording and the distribution agents. See [0146], [0989] and [1022].

4. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (US Pre Grant Pub. 2004/0054630) in view of Downing (US Pat. 6,842,522) as applied to claim 41 above, and further in view of Knight (US Pat. 6,243,350).

In regards to claim 50, Ginter does not disclose the step of distributing the recorded data to the consumer at no charge.

Knight teaches the step of distributing a plurality of movies to a user on a cartridge for free, wherein the user may obtain access the movies on the disk after making some type of payment. See column 58, lines 40-59.

It would have been obvious to one of ordinary skill in the art to modify the system by distributing a disk comprising a plurality of movies to the user at no charge, and receive payments only when a movie is played. The motivation is to let the user obtain a library of movies at no charge, while charging the user only when content is used.

5. Claims 57-58, 77-78, is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (US Pre Grant Pub. 2004/0054630) in view of Downing (US Pat. 6,842,522) as applied to claims 41 and 70 above, and further in view of Yuen et al. (US Pat. 6,147,715).

In regards to claims 57, and 77, Ginter does not disclose the step of providing the consumer with guides for identifying the multitude of copies of recorded data possessed by the consumer.

Yuen discloses the step of providing a guide (TIG) for identifying the plurality of recordings that are recorded in a storage medium. See abstract.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system by providing guide to identify the multitude copies of recorded data on a medium possessed by the consumer. The motivation is to

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provide an on screen navigation directory for guiding the user with program selection.

In regards to claims 58 and 78, the system does not comprise the step of transmitting data to update the information in guides.

Examiner takes official notice that it is well known to transmit information for updating guides.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system by transmitting information to update the guides, in order to provide the user with the latest up to date information regarding the programs.

6. Claim 59, is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (US Pre Grant Pub. 2004/0054630) in view of Downing (US Pat. 6,842,522) and Yuen et al. (US Pat. 6,147,715) as applied to claim 57 above, and further in view of Ward et al. (US Pre Grant Pub. 2005/0010949).

In regards to claim 59, the system does not disclose the step of updating guides with commercials based on the consumer's viewing of the played copies of digital data.

Ward et al. discloses the step of updating guides with commercials based on consumer's viewing habits, including played programs. See abstract, [0090], [0091] and [0306].

It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system in view of Ward's teachings by updating

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commercials in the program guide based on consumer's viewing of played copies of digital data. The motivation is to provide the consumers with advertisements that fit their viewing profile, thereby providing them advertisements they are likely to have interested in.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Pat. 6,574,424 to Dimitri et al.

"Circuit City's DIVX Format Bites The Dust!" from hometheater.about.com, published on 6/21/99.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to USHA RAMAN whose telephone number is (571)272-7380. The examiner can normally be reached on Mon-Fri: 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2424

/Usha Raman/